

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
Case No. 5:23-cv-00440-BO-RJ**

MXR IMAGING, INC.,

*Plaintiff,*

v.

EVOHEALTH LLC and STEVEN  
DEATON, *individually and in his ca-  
pacity as Chief Executive Officer and  
Owner of EvoHealth LLC,*

*Defendants.*

**MOTION FOR DEFAULT  
JUDGMENT AGAINST  
EVOHEALTH, LLC**

Plaintiff MXR Imaging, Inc., by its undersigned attorneys, moves for a default judgment against Defendant EvoHealth LLC. In support of this motion, Plaintiff states as follows:

1. Plaintiff commenced this action on August 7, 2023, asserting breach of contract and business tort claims against Defendants EvoHealth LLC and Steven Deaton, the CEO and owner of EvoHealth. (D.E. 1.)

2. On August 8, 2023, the Court issued a summons for each Defendant. (D.E. 5.) Plaintiff effected service on both Defendants. (D.E. 6, 7.)

3. Defendant Deaton filed a Chapter 7 bankruptcy petition on the day his response to the complaint was due in this case, triggering an automatic stay of litigation against him outside bankruptcy. (D.E. 8); *see In re Deaton*, No. 23-02527-5-PWM (E.D.N.C. Bankr.) (lead bankruptcy proceeding).

4. Plaintiff has since instituted an adversary proceeding in the bankruptcy court against Deaton to seek a determination of non-dischargeability of indebtedness under 11 U.S.C. § 523 with regard to its claims against Deaton in this action. *See MXR Imaging, Inc. v. Deaton* (In

*re Deaton*), No. 23-00102-5-PWM (E.D.N.C. Bankr.) (adversary proceeding) (D.E. 1). Plaintiff is diligently litigating that proceeding, and the case is currently in discovery.

5. Defendant EvoHealth did not respond to the complaint in this action. Plaintiff then moved for the entry of default against EvoHealth, which the Clerk granted. (*See* D.E. 9, 10.)

6. EvoHealth is not currently in bankruptcy or legally defunct. However, upon information and belief, it is non-operational and does not have any apparent assets. Nevertheless, Plaintiff moves for a default judgment against EvoHealth.

7. By defaulting, EvoHealth has admitted the factual allegations in the complaint. *Ryan v. Homecomings Fin. Network*, 253 F.3d 778, 780 (4th Cir. 2001); *see also* Fed. R. Civ. P. 8(b)(6) (“An allegation – other than one relating to the amount of damages – is admitted if a responsive pleading is required and the allegation is not denied.”).

8. After entry of default, “the court must consider whether the unchallenged facts support the relief sought.” *Carrington v. Easley*, No. 5:08-CT-3175-FL, 2011 WL 2132850, at \*2 (E.D.N.C. May 25, 2011) (citing *Ryan*, 253 F.3d at 780). Here, the facts establish that Plaintiff has satisfied the elements of causes of action Nos. 1–3 and 5 of the complaint. In the memorandum of law submitted concurrently with this motion, Plaintiff identifies the specific facts establishing that:

- a. EvoHealth is liable for breach of contract (Counts I and II).
- b. In the alternative to Counts I and II, EvoHealth is liable for unjust enrichment (Count III).
- c. EvoHealth is liable for violating the North Carolina Unfair and Deceptive Trade Practices Act, N.C.G.S. § 75-1.1 *et seq.* (Count V).

9. Next, the Court must make an independent determination regarding damages. *Id.* The Court may determine the amount of damages based on affidavits or may conduct a damages hearing. *E.E.O.C. v. Carter Behavior Health Servs., Inc.*, No. 4:09-CV-122-F, 2011 WL 5325485, at \*6 (E.D.N.C. Oct. 7, 2011) (report and recommendation), *adopted*, 2011 WL 5325473

(E.D.N.C. Nov. 3, 2011). The Declaration of Shelby Lemler (attached to this motion and the memorandum of law submitted concurrently with this motion, which incorporates the allegations of the complaint), establish that Plaintiff is entitled to recover the following monetary damages, summarized below:

<b>Item</b>	<b>Amount</b>
Compensatory damages	\$199,611.20
Treble damages	\$373,222.40
Pre-and post-judgment interest	To be determined, at 8% rate
Attorney's fees	Will be the subject of a subsequent motion

10. Plaintiff is entitled to an award of attorney's fees and costs. Pursuant to Fed. R. Civ. P. 54(d)(2), Plaintiff will move for an award of attorneys' fees within 14 days of entry of judgment.

11. This motion is further based on Plaintiff's contemporaneously submitted memorandum of law and on all other papers and pleadings on file with the Court in this matter.

12. Additionally, Plaintiff separately moves to seal portions of some of these documents to protect its confidential business information. The documents filed in support of this motion are filed provisionally under seal in unredacted form. Additionally, the memorandum in support of this motion and the declaration of Shelby Lemler are filed on the public docket, with proposed redactions.

Wherefore, Plaintiff requests that the Court:

- a. Enter a default judgment against EvoHealth holding it liable for Causes of Action Nos. 1–3 and 5, as set forth in the Complaint;
- b. Award actual damages in the amounts set forth above;
- c. Award treble damages in the amounts set forth above;
- d. Award pre- and post-judgment interest;
- e. Award attorney's fees;
- f. Award Plaintiff such other and further relief as this Court deems just and proper.

Filed: May 29, 2024

Respectfully Submitted,

MXR IMAGING, INC.

By: /s/ Benjamin S. Morrell  
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*Counsel for Plaintiff*

## CERTIFICATE OF SERVICE

I hereby certify that on the date listed below, I served the foregoing document and the proposed order referenced therein on Defendants EvoHealth and Steven Deaton by mailing them via USPS First Class mail, postage prepaid, to Defendants' last known addresses listed below:

EvoHealth LLC  
2626 Glenwood Ave., Ste. 550  
Raleigh, NC 27608

Steven Deaton  
12201 Beestone Lane  
Raleigh, NC 27614

I further certify that on the date listed below, I sent the foregoing document and the proposed order referenced therein by mailing them via USPS First Class mail, postage prepaid, and by sending them via email to Attorneys Travis Sasser and Philip Sasser (whom the undersigned has reason to believe represents Defendant EvoHealth LLC and/or Defendant Deaton), at the following addresses:

Travis Sasser  
Philip Sasser  
Sasser Law Firm  
2000 Regency Parkway, Suite 230  
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[travis@sasserbankruptcy.com](mailto:travis@sasserbankruptcy.com)  
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Date: May 29, 2024.

By: /s/ Benjamin S. Morrell  
Benjamin S. Morrell  
*Counsel for Plaintiff*